



JUVENILE JUSTICE COMMITTEE

MEETING PACKET

**Tuesday, April 4, 2006
10:15 – 11:00 AM
214 Capitol**



FLORIDA HOUSE OF REPRESENTATIVES

Allan G. Bense, Speaker

Juvenile Justice Committee

Faye B. Culp
Chair

Mitch Needelman
Vice Chair

Meeting Agenda
Tuesday, April 4, 2006
10:15-11:00 AM
214 Capitol

- I. Opening remarks by Chair Culp**
- II. Roll call**
- III. Consideration of the following committee bill: HB 27 Juvenile Delinquents by Antone**
- IV. Consideration of the following committee bill: HB 403 CS School Attendance by McInvale**
- V. Consideration of the following committee bill: HB 605 CS Public Records by Planas**
- VI. Closing remarks by Chair Culp**
- VII. Adjournment**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 27
SPONSOR(S): Antone
TIED BILLS:

Juvenile Delinquents

IDEN./SIM. BILLS: SB 1668

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Juvenile Justice Committee		White	White
2) Fiscal Council			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Florida statute does not currently address issues regarding the citizenship of delinquents referred to the Department of Juvenile Justice (DJJ).

The bill amends state delinquency law to require a juvenile probation officer to: (a) determine during the intake process whether each child referred to the DJJ is, or is suspected of being, illegally in the United States (U.S.); and (b) to report each child found to be, or suspected of being, illegally in the U.S. to the DJJ and the federal Bureau of Customs and Border Protection.

The bill also requires the DJJ to establish an automated, centralized database to collect citizenship information for all children referred to the DJJ and to establish methods for sharing this information with specified federal and state law enforcement agencies and the state court system.

Further, the bill authorizes delinquency courts that have jurisdiction of an adjudicated, foreign delinquent child, who is not in the U.S. in a legal status, to order: (a) that the child be returned to his or her country of origin; and (b) the DJJ to transfer physical custody of the child to the federal Bureau of Customs and Border Protection for removal from this country.

The bill provides an effective date of July 1, 2006.

The DJJ states that the fiscal impact of this bill indeterminate. See Fiscal Analysis and Economic Impact Statement, *infra*.

The bill has several drafting issues, including that it appears to unconstitutionally authorize state delinquency courts to order the return of an adjudicated delinquent child, who is illegally in this country, to his or her country of origin. See III. A. CONSTITUTIONAL ISSUES and III. C. DRAFTING ISSUES OR OTHER COMMENTS, *infra*. It is anticipated that an amendment will be filed to address these issues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- The bill increases the responsibilities of the Department of Juvenile Justice (DJJ) by requiring it to determine if a child referred to it is, or is suspected of being, in the United States (U.S.) illegally, and if so, to report that child to the federal Bureau of Customs and Border Protection. It also increases the DJJ's rulemaking authority by requiring it to adopt rules relating to its collection of citizenship information for all children referred to it. Further, It increases the authority of courts to order that an adjudicated, foreign delinquent child, who is illegally in the U.S., be returned to his or her country of origin.

Maintain public security – The bill increases the likelihood that federal immigration authorities will be made aware of delinquents who are illegally in the U.S.

B. EFFECT OF PROPOSED CHANGES:

Immigration and Nationality Act: The Federal Immigration and Nationality Act (INA)¹ governs the admission of all foreigners to the U.S. The INA defines an "alien" as any person not a citizen or national² of the U.S.³ and sets forth the rules for admission to, and exclusion from, the U.S.

The chief categories of admission status under the INA for aliens include the following:

- Nonimmigrant visa status meaning the admission is for a period of time prescribed by the U.S. Attorney General in regulation.⁴ An alien who does not depart at the expiration of this period of time subjects himself or herself to deportation.⁵
- Immigrant visa status meaning the person is a lawful permanent resident of the U.S.⁶ These persons possess Alien Registration Receipt Cards, popularly referred to as green cards.
- Naturalized citizen meaning the person has renounced his or her former nationality and is granted all privileges of a native citizen in the U.S., except that he or she may not become President of the U.S.⁷
- Refugee status meaning the person is not physically present in the U.S. and is seeking admission based upon grounds that he or she is unable or unwilling to return to their country of nationality because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.⁸
- Asylee status meaning the person is physically present in the U.S. and is seeking admission based upon a well-founded fear of persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion, if made to return to his or her country of nationality or his or her last place of habitual residence.⁹

¹ Immigration and Naturalization Act of 1952, 8 U.S.C.A. §§ 1101 et seq., as amended.

² A "national" is a citizen of the U.S. or a person who, though not a citizen of the U.S., owes permanent allegiance to the United States. Presently, the only noncitizen nationals of the U.S. are residents of the American Samoa and Swains Island. *The ABC's Of Immigration - Immigration Terminology, Part I*, Siskind's Immigration Bulletin, <http://www.visalaw.com/03aug1/2aug103.html>.

³ 8 U.S.C.A. § 1101(a)(3).

⁴ 8 U.S.C.A. § 1184(a).

⁵ 8 U.S.C.A. § 1227(a)(1).

⁶ 8 U.S.C.A. § 1101(15).

⁷ 8 U.S.C.A. §§ 1422.

⁸ 8 U.S.C.A. § 1101(a)(42).

⁹ 8 U.S.C.A. § 1158(a).

Pursuant to the INA, an alien is subject to deportation if he or she falls within one or more of the statutory classes of deportable aliens.¹⁰ The classes of deportable aliens include nonimmigrant aliens who do not maintain the conditions attached to their admission status¹¹ and aliens who commit specified crimes.^{12 13}

Bureau of Immigration and Customs Enforcement: The Bureau of Immigration and Customs Enforcement (ICE) within the Department of Homeland Security is responsible for the identification, apprehension and removal of illegal aliens from the U.S., and is further authorized to detain deportable aliens and to place such aliens in removal, i.e., deportation, proceedings before a federal immigration judge.¹⁴

ICE operates the Law Enforcement Support Center (LSEC) and its website states:

Located in Williston, Vermont, the LESC operates 24 hours a day, 365 days a year, to supply real-time assistance to law enforcement officers who are investigating or have arrested foreign-born individuals involved in criminal activity. The primary users of the LESC are state and local law enforcement officers seeking information about aliens encountered in the ordinary course of their daily enforcement activities. The LESC receives queries from federal, state, and local correctional and court systems seeking information about individuals in custody or encountered elsewhere in a criminal justice system. Law Enforcement officers have immediate access to alien records entered in the NCIC (National Crime Information Center) and immigration information from every alien file maintained by the Department of Homeland Security – approximately 93 million records – by accessing the IAQ (Immigration Alien Query) database through the NCIC.¹⁵

Law enforcement officials with probable cause to believe that an alien is in violation of U.S. immigration law may contact the LSEC to determine whether ICE wishes to take custody of the alien.¹⁶

Delinquency and Citizenship in Florida: Chapter 985, F.S., which governs delinquency matters in Florida, does not currently address issues regarding the citizenship of children referred to the DJJ.

In its bill analysis,¹⁷ the DJJ indicates that its juvenile probation officers (JPOs) currently ask each child referred to the DJJ during intake whether he or she is a U.S. citizen. According to the DJJ, if the child answers yes, the intake process is completed based on the assumption that the child is in fact a U.S. citizen. If the answer is no, the DJJ notifies the child of his or her right to have the foreign consulate contacted when they are arrested and/or detained.

The DJJ analysis also indicates that it is difficult for a JPO to determine the true citizenship status of a child, as there is typically little documentation available on this issue. To overcome this barrier, the Secretary of the DJJ requested that law enforcement agencies in this state screen the names of each child taken into custody in the LSEC database; however, law enforcement agencies do not consistently

¹⁰ 8 U.S.C.A. § 1227.

¹¹ 8 U.S.C.A. § 1227(a)(1)(C).

¹² See 8 U.S.C.A. § 1227(a)(2) (providing that an alien may be deportable if he or she has committed crimes that include specified moral turpitude offenses, aggravated felonies, drug offenses, domestic violence and stalking offenses, or child abuse).

¹³ As stated in a law review article, the federal statute defining deportable crimes seeks to incorporate by reference hundreds of state and federal criminal offenses. *FINALITY OF CONVICTION, THE RIGHT TO APPEAL, AND DEPORTATION UNDER MONTENEGRO V. ASHCROFT: THE CASE OF THE DOG THAT DID NOT BARK*, 40 USFLR 241, 244-245, Fall 2005.

¹⁴ "Prior to the September 11 attacks, immigration services and enforcement were handled by the Immigration and Naturalization Service ("INS"). After the attacks, the INS was abolished and its responsibilities were transferred to the new Department of Homeland Security, which splits immigration and naturalization services and immigration enforcement between United States Citizenship and Immigration Services and ICE, respectively." *Id.* at 278.

¹⁵ <http://www.ice.gov/graphics/news/factsheets/081204lesc.htm>, as accessed on April 2, 2006.

¹⁶ *THE QUINTESSENTIAL FORCE MULTIPLIER: THE INHERENT AUTHORITY OF LOCAL POLICE TO MAKE IMMIGRATION ARRESTS*, 69 ALBLR 179, 181, 2005-2006.

¹⁷ Department of Juvenile Justice Analysis for SB 1668, February 27, 2006.

perform this screening. Further, the LSEC database is limited in that it does not contain the names of all illegal aliens in the U.S.

The DJJ indicates that when a LSEC database screening indicates that a child is an illegal alien that DJJ staff call the appropriate authorities within the Department of Homeland Security; however, the typical result is a voice mail asking for a message. Staff leave a detailed message, but are rarely called back. Further, when a person does answer the call, the response is, "frequently that delinquents are not a high priority."¹⁸

Effect of bill: *The bill amends s. 985.21, F.S., to require a JPO to: (a) determine during the intake process whether each child is, or is suspected of being, illegally in the U.S.; and (b) to report each child found to be, or suspected of being, illegally in the U.S. to the DJJ and the U.S. Bureau of Customs and Border Protection if that child is the subject of a petition alleging that he or she has committed an act that would be a crime if committed by an adult.*

The bill also requires the DJJ to:

- *Establish a centralized, automated intake and screening database to collect citizenship information for all children referred to the DJJ.*
- *Establish methods and parameters for the collection of citizenship information from the U.S. Bureau of Customs and Border Protection, the Department of Law Enforcement, state law enforcement agencies, and the state court system.*
- *Share information in its database with federal, state, and local law enforcement agencies and prosecutors and courts.*
- *Adopt rules to administer the aforementioned requirements.*

Finally, the bill amends s. 985.231, F.S., to specify that a court that has jurisdiction of an adjudicated delinquent child, who resides in, or is a citizen of, a foreign country, and who is not in this country in a legal status, may: (a) notify the U.S. Bureau of Customs and Border Protection of the adjudication; (b) order that the child be returned to his or her country of origin; and (c) order the DJJ to transfer physical custody of the child to the U.S. Bureau of Customs and Border Protection for removal from this country.

The bill provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 985.21, F.S., to require the DJJ to: report children found to be, or suspected of being, illegally in the U.S.; develop a centralized, automated database to collect citizenship information; and adopt rules to share database information with specified agencies and individuals.

Section 2. Amends s. 985.231, F.S., to authorize a court with jurisdiction of an adjudicated delinquent, who is not in the U.S. in a legal status, to notify the federal government, order the child's return to his or her country, and require the DJJ to transfer custody of the child to the federal government.

Section 3. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None apparent.

¹⁸ Department of Juvenile Justice Analysis for SB 1668 at p. 3.

2. Expenditures:

According to the DJJ, "an accurate fiscal note [for this bill] is impossible to do" because it cannot comply with the bill's requirement that it establish a centralized, automated intake and screening database to collect information concerning the citizenship of children referred to the department. The DJJ indicates that automated access to the LSEC database is not available; instead, each child's name must be manually input in the NCIC for screening by the LSEC database.

Further, the DJJ's fiscal analysis states:

The workload associated with this bill will be substantial and might require additional JPOs to cover caseloads, which will inevitably take longer to process. It is impossible to determine at this time how many JPOs would be necessary or how much longer the process would take with each case. Additionally, the bill would necessitate the installation of new workstations that must meet specific security and access restrictions monitored in Florida by FDLE. Some of these requirements include a secure room, with limited access, and limited visibility. An individual must not be able to see the workstation from a window. FDLE also requires that individuals who have access to the system be formally trained. The training is approximately four hours with an hour-long test at the end. Each intake JPO would be required to take this training course and corresponding test to access the ICE database through the NCIC/FCIC database.¹⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None apparent.

2. Expenditures:

None apparent.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None apparent.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

The bill provides that Florida delinquency courts may order the return of an adjudicated, foreign delinquent child who is illegally in the U.S. to his or her country of origin. Congress, however, has

¹⁹ *Id.* at p. 6.

exclusive authority over immigration and naturalization and matters of deportation are solely within province of the federal government. Accordingly, this provision of the bill appears to be preempted by federal immigration law.^{20 21}

B. RULE-MAKING AUTHORITY:

The bill requires the DJJ to adopt rules relating to the establishment of: (a) a centralized, automated database for the collection of citizenship information for all children referred to the DJJ; (b) methods and parameters for the collection of citizenship information from various federal, state, and local agencies; and (c) methods for sharing citizenship information with federal, state, and local law enforcement agencies and prosecutors and courts.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill refers to the U.S. Bureau of Customs and Border Protection several times; however, the correct reference is the Bureau of Immigration and Customs Enforcement, as this Bureau is currently responsible for the identification, apprehension and removal of illegal aliens from the United States.

The bill requires the DJJ to establish a centralized, automated intake and screening database to collect information concerning the citizenship of children referred to the department. The DJJ indicates, however, that it cannot comply with this requirement because automated access to the LSEC database is not available. Instead, each child's name must be manually input into the NCIC for screening by the LSEC database.

The bill authorizes a state delinquency court to order the DJJ to transfer physical custody of specified children to the U.S. Bureau of Customs and Border Protection. The DJJ, however, has no authority to require the federal government to accept custody of a child.

Finally, as discussed *supra* in the section of this analysis entitled, "A. Constitutional Issues" the bill unconstitutionally authorizes state delinquency courts to order the return of an adjudicated, foreign delinquent child who is illegally in the U.S. to his or her country of origin.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

²⁰ See Immigration and Naturalization Act of 1952, 8 U.S.C.A. §§ 1101 et seq., as amended.

²¹ See *Torros v. State*, 415 So.2d 908 (Fla. 2d DCA 1982) (court could not order illegal alien to be deported to Cuba if he violates probation because of preemption of federal law; however, court could recommend deportation to federal authorities); and *I.H. v. State*, 656 So.2d 622 (Fla. 2nd DCA 1995)(court could not order deportation of child upon completion of commitment, but could recommend deportation to the federal authorities).

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1 A bill to be entitled
 2 An act relating to juvenile delinquents; amending s.
 3 985.21, F.S.; requiring a juvenile probation officer to
 4 determine the country of citizenship of each child
 5 referred to the Department of Juvenile Justice; requiring
 6 the juvenile probation officer to report the information
 7 to the department and the United States Bureau of Customs
 8 and Border Protection; requiring the department to develop
 9 a centralized, automated database to collect information
 10 on the country of citizenship for children referred to the
 11 department; directing the department to make the
 12 information available to certain federal, state, and local
 13 agencies; requiring the department to adopt rules;
 14 amending s. 985.231, F.S.; requiring that a juvenile court
 15 under specified circumstances notify the United States
 16 Bureau of Customs and Border Protection of the
 17 adjudication of a child, order that the child be returned
 18 to his or her country of origin, and order the department
 19 to transfer the physical custody of the child to the
 20 United States Bureau of Customs and Border Protection for
 21 the appropriate processing to remove the child from this
 22 country; providing an effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Subsection (1) of section 985.21, Florida
 27 Statutes, is amended to read:

28 985.21 Intake and case management.--

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(1)(a) During the intake process, the juvenile probation officer shall screen each child or shall cause each child to be screened in order to determine:

1. Appropriateness for release, referral to a diversionary program including, but not limited to, a teen-court program, referral for community arbitration, or referral to some other program or agency for the purpose of nonofficial or nonjudicial handling.

2. The presence of medical, psychiatric, psychological, substance abuse, educational, or vocational problems, or other conditions that may have caused the child to come to the attention of law enforcement or the department of ~~Juvenile Justice~~. The child shall also be screened to determine whether the child poses a danger to himself or herself or others in the community. The results of this screening shall be made available to the court and to court officers. In cases where such conditions are identified, and a nonjudicial handling of the case is chosen, the juvenile probation officer shall attempt to refer the child to a program or agency, together with all available and relevant assessment information concerning the child's precipitating condition.

3.a. Whether the child is, or is suspected of being, in the United States illegally. If the child is found to be, or is suspected of being, in the United States illegally, notwithstanding any other law, the juvenile probation officer shall report to the department and the United States Bureau of Customs and Border Protection that the child is a juvenile who is the subject of a petition alleging that he or she committed

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an act that would be a crime if committed by an adult. The report must include the nature of the offense the child is alleged to have committed.

b. The department shall develop a centralized, automated intake and screening database to collect information concerning the country of citizenship for children referred to the department in order to facilitate the exchange of information pursuant to the intent and purpose of this chapter. The department shall establish methods and parameters by which citizenship information and data are collected from the United States Bureau of Customs and Border Protection, the Department of Law Enforcement, law enforcement agencies in this state, and the state court system. Information developed in or through the use of the database shall be made available to federal, state, and local law enforcement agencies and prosecutors and courts in a manner defined by the department and as allowed by state or federal law or rule. The department shall adopt rules to administer the provisions of this sub-subparagraph.

~~(b)3-~~ The department ~~of Juvenile Justice~~ shall develop an intake and a case management system whereby a child brought into intake is assigned a juvenile probation officer if the child was not released, referred to a diversionary program, referred for community arbitration, or referred to some other program or agency for the purpose of nonofficial or nonjudicial handling, and shall make every reasonable effort to provide case management services for the child; provided, however, that case management for children committed to residential programs may be transferred as provided in s. 985.316.

(c)4. In addition to duties specified in other sections and through departmental rules, the assigned juvenile probation officer shall be responsible for the following:

1.a. Ensuring that a risk assessment instrument establishing the child's eligibility for detention has been accurately completed and that the appropriate recommendation was made to the court.

2.b. Inquiring as to whether the child understands his or her rights to counsel and against self-incrimination.

3.e. Performing the preliminary screening and making referrals for comprehensive assessment regarding the child's need for substance abuse treatment services, mental health services, retardation services, literacy services, or other educational or treatment services.

4.d. Coordinating the multidisciplinary assessment when required, which includes the classification and placement process that determines the child's priority needs, risk classification, and treatment plan. When sufficient evidence exists to warrant a comprehensive assessment and the child fails to voluntarily participate in the assessment efforts, it is the responsibility of the juvenile probation officer to inform the court of the need for the assessment and the refusal of the child to participate in such assessment. This assessment, classification, and placement process shall develop into the predisposition report.

5.e. Making recommendations for services and facilitating the delivery of those services to the child, including any mental health services, educational services, family counseling

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113 services, family assistance services, and substance abuse
114 services. The juvenile probation officer shall serve as the
115 primary case manager for the purpose of managing, coordinating,
116 and monitoring the services provided to the child. Each program
117 administrator within the Department of Children and Family
118 Services shall cooperate with the primary case manager in
119 carrying out the duties and responsibilities described in this
120 section.

121
122 The department of ~~Juvenile Justice~~ shall annually advise the
123 Legislature and the Executive Office of the Governor of the
124 resources needed in order for the intake and case management
125 system to maintain a staff-to-client ratio that is consistent
126 with accepted standards and allows the necessary supervision and
127 services for each child. The intake process and case management
128 system shall provide a comprehensive approach to assessing the
129 child's needs, relative risks, and most appropriate handling,
130 and shall be based on an individualized treatment plan.

131 (d) ~~(b)~~ The intake and case management system shall
132 facilitate consistency in the recommended placement of each
133 child, and in the assessment, classification, and placement
134 process, with the following purposes:

135 1. An individualized, multidisciplinary assessment process
136 that identifies the priority needs of each individual child for
137 rehabilitation and treatment and identifies any needs of the
138 child's parents or guardians for services that would enhance
139 their ability to provide adequate support, guidance, and
140 supervision for the child. This process shall begin with the

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141 detention risk assessment instrument and decision, shall include
142 the intake preliminary screening and comprehensive assessment
143 for substance abuse treatment services, mental health services,
144 retardation services, literacy services, and other educational
145 and treatment services as components, additional assessment of
146 the child's treatment needs, and classification regarding the
147 child's risks to the community and, for a serious or habitual
148 delinquent child, shall include the assessment for placement in
149 a serious or habitual delinquent children program pursuant to s.
150 985.31. The completed multidisciplinary assessment process shall
151 result in the predisposition report.

152 2. A classification system that assigns a relative risk to
153 the child and the community based upon assessments including the
154 detention risk assessment results when available to classify the
155 child's risk as it relates to placement and supervision
156 alternatives.

157 3. An admissions process that facilitates for each child
158 the utilization of the treatment plan and setting most
159 appropriate to meet the child's programmatic needs and provide
160 the minimum program security needed to ensure public safety.

161 Section 2. Paragraph (a) of subsection (1) of section
162 985.231, Florida Statutes, is amended to read:

163 985.231 Powers of disposition in delinquency cases.--

164 (1)(a) The court that has jurisdiction of an adjudicated
165 delinquent child may, by an order stating the facts upon which a
166 determination of a sanction and rehabilitative program was made
167 at the disposition hearing:

168 1. Place the child in a probation program or a

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169 postcommitment probation program under the supervision of an
170 authorized agent of the department or of any other person or
171 agency specifically authorized and appointed by the court,
172 whether in the child's own home, in the home of a relative of
173 the child, or in some other suitable place under such reasonable
174 conditions as the court may direct. A probation program for an
175 adjudicated delinquent child must include a penalty component
176 such as restitution in money or in kind, community service, a
177 curfew, revocation or suspension of the driver's license of the
178 child, or other nonresidential punishment appropriate to the
179 offense and must also include a rehabilitative program component
180 such as a requirement of participation in substance abuse
181 treatment or in school or other educational program. If the
182 child is attending or is eligible to attend public school and
183 the court finds that the victim or a sibling of the victim in
184 the case is attending or may attend the same school as the
185 child, the court placement order shall include a finding
186 pursuant to the proceedings described in s. 985.23(1)(d). Upon
187 the recommendation of the department at the time of disposition,
188 or subsequent to disposition pursuant to the filing of a
189 petition alleging a violation of the child's conditions of
190 postcommitment probation, the court may order the child to
191 submit to random testing for the purpose of detecting and
192 monitoring the use of alcohol or controlled substances.

193 a. A classification scale for levels of supervision shall
194 be provided by the department, taking into account the child's
195 needs and risks relative to probation supervision requirements
196 to reasonably ensure the public safety. Probation programs for

197 children shall be supervised by the department or by any other
198 person or agency specifically authorized by the court. These
199 programs must include, but are not limited to, structured or
200 restricted activities as described in this subparagraph, and
201 shall be designed to encourage the child toward acceptable and
202 functional social behavior. If supervision or a program of
203 community service is ordered by the court, the duration of such
204 supervision or program must be consistent with any treatment and
205 rehabilitation needs identified for the child and may not exceed
206 the term for which sentence could be imposed if the child were
207 committed for the offense, except that the duration of such
208 supervision or program for an offense that is a misdemeanor of
209 the second degree, or is equivalent to a misdemeanor of the
210 second degree, may be for a period not to exceed 6 months. When
211 restitution is ordered by the court, the amount of restitution
212 may not exceed an amount the child and the parent or guardian
213 could reasonably be expected to pay or make. A child who
214 participates in any work program under this part is considered
215 an employee of the state for purposes of liability, unless
216 otherwise provided by law.

217 b. The court may conduct judicial review hearings for a
218 child placed on probation for the purpose of fostering
219 accountability to the judge and compliance with other
220 requirements, such as restitution and community service. The
221 court may allow early termination of probation for a child who
222 has substantially complied with the terms and conditions of
223 probation.

224 c. If the conditions of the probation program or the

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225 postcommitment probation program are violated, the department or
226 the state attorney may bring the child before the court on a
227 petition alleging a violation of the program. Any child who
228 violates the conditions of probation or postcommitment probation
229 must be brought before the court if sanctions are sought. A
230 child taken into custody under s. 985.207 for violating the
231 conditions of probation or postcommitment probation shall be
232 held in a consequence unit if such a unit is available. The
233 child shall be afforded a hearing within 24 hours after being
234 taken into custody to determine the existence of probable cause
235 that the child violated the conditions of probation or
236 postcommitment probation. A consequence unit is a secure
237 facility specifically designated by the department for children
238 who are taken into custody under s. 985.207 for violating
239 probation or postcommitment probation, or who have been found by
240 the court to have violated the conditions of probation or
241 postcommitment probation. If the violation involves a new charge
242 of delinquency, the child may be detained under s. 985.215 in a
243 facility other than a consequence unit. If the child is not
244 eligible for detention for the new charge of delinquency, the
245 child may be held in the consequence unit pending a hearing and
246 is subject to the time limitations specified in s. 985.215. If
247 the child denies violating the conditions of probation or
248 postcommitment probation, the court shall appoint counsel to
249 represent the child at the child's request. Upon the child's
250 admission, or if the court finds after a hearing that the child
251 has violated the conditions of probation or postcommitment
252 probation, the court shall enter an order revoking, modifying,

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or continuing probation or postcommitment probation. In each such case, the court shall enter a new disposition order and, in addition to the sanctions set forth in this paragraph, may impose any sanction the court could have imposed at the original disposition hearing. If the child is found to have violated the conditions of probation or postcommitment probation, the court may:

(I) Place the child in a consequence unit in that judicial circuit, if available, for up to 5 days for a first violation, and up to 15 days for a second or subsequent violation.

(II) Place the child on home detention with electronic monitoring. However, this sanction may be used only if a residential consequence unit is not available.

(III) Modify or continue the child's probation program or postcommitment probation program.

(IV) Revoke probation or postcommitment probation and commit the child to the department.

d. Notwithstanding s. 743.07 and paragraph (d), and except as provided in s. 985.31, the term of any order placing a child in a probation program must be until the child's 19th birthday unless he or she is released by the court, on the motion of an interested party or on its own motion.

2. Commit the child to a licensed child-caring agency willing to receive the child, but the court may not commit the child to a jail or to a facility used primarily as a detention center or facility or shelter.

3. Commit the child to the department at a restrictiveness level defined in s. 985.03. Such commitment must be for the

281 purpose of exercising active control over the child, including,
282 but not limited to, custody, care, training, urine monitoring,
283 and treatment of the child and release of the child from
284 residential commitment into the community in a postcommitment
285 nonresidential conditional release program. If the child is
286 eligible to attend public school following commitment and the
287 court finds that the victim or a sibling of the victim in the
288 case is or may be attending the same school as the child, the
289 commitment order shall include a finding pursuant to the
290 proceedings described in s. 985.23(1)(d). If the child is not
291 successful in the conditional release program, the department
292 may use the transfer procedure under s. 985.404. Notwithstanding
293 s. 743.07 and paragraph (d), and except as provided in s.
294 985.31, the term of the commitment must be until the child is
295 discharged by the department or until he or she reaches the age
296 of 21.

297 4. Revoke or suspend the driver's license of the child.

298 5. Require the child and, if the court finds it
299 appropriate, the child's parent or guardian together with the
300 child, to render community service in a public service program.

301 6. As part of the probation program to be implemented by
302 the department, or, in the case of a committed child, as part of
303 the community-based sanctions ordered by the court at the
304 disposition hearing or before the child's release from
305 commitment, order the child to make restitution in money,
306 through a promissory note cosigned by the child's parent or
307 guardian, or in kind for any damage or loss caused by the
308 child's offense in a reasonable amount or manner to be

determined by the court. The clerk of the circuit court shall be the receiving and dispensing agent. In such case, the court shall order the child or the child's parent or guardian to pay to the office of the clerk of the circuit court an amount not to exceed the actual cost incurred by the clerk as a result of receiving and dispensing restitution payments. The clerk shall notify the court if restitution is not made, and the court shall take any further action that is necessary against the child or the child's parent or guardian. A finding by the court, after a hearing, that the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts absolves the parent or guardian of liability for restitution under this subparagraph.

7. Order the child and, if the court finds it appropriate, the child's parent or guardian together with the child, to participate in a community work project, either as an alternative to monetary restitution or as part of the rehabilitative or probation program.

8. Commit the child to the department for placement in a program or facility for serious or habitual juvenile offenders in accordance with s. 985.31. Any commitment of a child to a program or facility for serious or habitual juvenile offenders must be for an indeterminate period of time, but the time may not exceed the maximum term of imprisonment that an adult may serve for the same offense. The court may retain jurisdiction over such child until the child reaches the age of 21, specifically for the purpose of the child completing the program.

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337 9. In addition to the sanctions imposed on the child,
338 order the parent or guardian of the child to perform community
339 service if the court finds that the parent or guardian did not
340 make a diligent and good faith effort to prevent the child from
341 engaging in delinquent acts. The court may also order the parent
342 or guardian to make restitution in money or in kind for any
343 damage or loss caused by the child's offense. The court shall
344 determine a reasonable amount or manner of restitution, and
345 payment shall be made to the clerk of the circuit court as
346 provided in subparagraph 6.

347 10. Subject to specific appropriation, commit the juvenile
348 sexual offender to the department for placement in a program or
349 facility for juvenile sexual offenders in accordance with s.
350 985.308. Any commitment of a juvenile sexual offender to a
351 program or facility for juvenile sexual offenders must be for an
352 indeterminate period of time, but the time may not exceed the
353 maximum term of imprisonment that an adult may serve for the
354 same offense. The court may retain jurisdiction over a juvenile
355 sexual offender until the juvenile sexual offender reaches the
356 age of 21, specifically for the purpose of completing the
357 program.

358 11. If the residence of a child adjudicated delinquent is
359 in a foreign country or if the child adjudicated delinquent is a
360 citizen of a foreign country and is not in this country in a
361 legal status, notify the United States Bureau of Customs and
362 Border Protection of the adjudication of the child, order that
363 the child be returned to his or her country of origin, and order
364 the department to transfer the physical custody of the child to

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365 | the United States Bureau of Customs and Border Protection for
366 | the appropriate processing to remove the child from this
367 | country.

368 | Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 403 CS

School Attendance

SPONSOR(S): McInvale

TIED BILLS:

IDEN./SIM. BILLS: CS/SB 772

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>PreK-12 Committee</u>	<u>7 Y, 0 N, w/CS</u>	<u>Beagle</u>	<u>Mizereck</u>
2) <u>Juvenile Justice Committee</u>	<u></u>	<u>White</u>	<u>White</u>
3) <u>Education Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Education Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Florida law enables a student to terminate school enrollment prior to high school graduation at age 16. Current law and State Board of Education (SBE) rule provide extensive procedures for the recording and enforcement of school attendance.

House bill 403 clarifies existing law by stating that students aged 16 or older remain subject to compulsory school attendance until a formal declaration of intent to terminate school enrollment is filed. The bill requires school districts to conduct an exit interview with each student who declares their intent to terminate school enrollment.

The bill authorizes district school boards to adopt attendance policies that allow accumulated unexcused tardies and early departures from school to be recorded as unexcused absences. The bill also authorizes district school boards to require referral to a school child study team (CST) when a student has fewer absences than currently required by law.

The bill provides that district school superintendents are responsible for supporting law enforcement efforts to enforce school attendance.

The bill revises the current list of interventions that may be implemented by CSTs by requiring three specific interventions, and making others optional.

The bill has an effective date of July 1, 2006.

This bill does not appear to have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-- The bill grants district school boards greater authority in adopting student attendance policies. The bill requires school districts to conduct exit interviews with students who declare their intent to terminate school enrollment.

B. EFFECT OF PROPOSED CHANGES:

ABSENCES AND TARDINESS:

Background Information:

Florida law grants district school boards authority to enforce attendance laws.¹ Section 1003.23(1) requires that attendance of all public K-12 students be recorded and reported. Public schools are required to record the daily presence, absence, or tardiness of each student and maintain attendance records during the 180 day school year.² However, there is no express guidance in law that grants school district's the authority to record unexcused accumulated tardies as unexcused absences.

Bill's Effect:

House bill 403 specifies that district school boards may establish student attendance policies that allow accumulated unexcused tardies and early departures from school to be counted as unexcused absences.

COMPULSORY SCHOOL ATTENDANCE:

Background Information:

Compulsory school attendance refers to the minimum and maximum ages in which students must attend school. Current Florida Law provides that the compulsory school attendance minimum age includes all children who are either six years of age, who will be six years old by February 1 of any school year, or who are older than six years of age but who have not attained the age of sixteen years.³

In Florida, a student may terminate school enrollment at age sixteen. Such students must file a formal declaration of intent to terminate enrollment with the district school board. The district must notify the student's parent upon receipt of the student's declaration. The student and the student's parent must sign an acknowledgment that terminating school enrollment is likely to impact the student's future earning potential.⁴

Current law states that "a student who attains age sixteen years during the school year is not subject to compulsory school attendance beyond the date upon which he or she attains that age if the student files a formal declaration of intent to terminate school enrollment with the district school board."⁵ Some students simply stop attending school without filing a formal declaration. Districts have expressed concern that they are not specifically authorized to compel those students to formally withdraw.

¹ Section 1003.02(1)(b), F.S.

² State Board of Education Rule 6A-1.044, Pupil Attendance Records.

³ Section 1003.21(1)(a)1., F.S.

⁴ Section 1003.21(1)(c), F.S.

⁵ Id.

Bill's Effect:

The bill clarifies existing law by stating that public school students sixteen years of age or older who have not graduated from high school remain subject to compulsory school attendance until they file a formal declaration of intent to terminate school enrollment.

The bill also requires school districts to conduct an exit interview with each student who terminates school enrollment to ascertain the reasons for the student's decision and actions that could be taken to keep the student in school. The district must inform students of educational options that are available to continue their education. To provide policy makers with data on students' reasons for terminating school enrollment, each student must complete a survey designed by the DOE.

ENFORCEMENT OF SCHOOL ATTENDANCE:

Background information:

Florida law provides extensive measures for enforcing school attendance. Section 1003.26, F.S. grants district school superintendents the authority to enforce school attendance. Each superintendent is responsible for recommending attendance policies and procedures to the district school board. District attendance policies must include the following:⁶

- Procedures for contacting parents regarding each student absence;
- Procedures for parents to justify each unexcused absence;
- Procedures for tracking student absences and identifying and preventing the development of patterns of nonattendance; and
- Procedures for referring a student's case to the school's child study team (CST) if the student is identified as having established a pattern of non-attendance (defined as five unexcused absences in a calendar month or ten unexcused absences in a ninety-day periods).

Upon referring the case to a CST, the team meets with the student's parent to identify potential remedies for the student's nonattendance in school. If this initial meeting does not resolve the problem the CST must determine and implement appropriate interventions. After all reasonable measures by the CST to resolve the problem have failed the CST must contact the district superintendent.

Parents who refuse to participate in remedial strategies recommended by the CST may appeal to the district school board. If the board determines that the strategies proposed by the CST are appropriate, and the parent still refuses to cooperate, the school superintendent may seek criminal prosecution against the parent for noncompliance with compulsory school attendance.⁷

Similarly, students who refuse to comply with attempts to enforce school attendance must be referred by the district superintendent or student's parent to a Department of Juvenile Justice case staffing committee. The school superintendent may also file a truancy petition under s. 984.151, F.S.⁸

⁶ Section 1003.26(1)(a),(b) and (c), F.S.

⁷ Section 1003.26(1)(e), F.S.

⁸ Section 984.151, F.S., permits the superintendent to file a truancy petition when the child has more than 15 unexcused absences in a 90-calendar-day period or after a CST has acted pursuant to s. 1003.26(1), F.S., and the child has either: (a) five unexcused absences, or absences for which the reasons are unknown within one calendar month; or (b) ten unexcused absences, or absences for which the reasons are unknown within a 90-calendar-day period. A court must hear the petition within 30 days and if it finds that a child has missed any of the alleged days, it must order the child to attend school and the parent/guardian to ensure such attendance. The court is also permitted to order other sanctions for the child and parent that include classes and counseling. The court is required enforce parent/guardian compliance with its order through its contempt power. If a child fails to comply with the court's order, the child's case must be referred to a case staffing committee with a recommendation to file a child-in-need-of-services petition.

Section 1003.27, F.S. requires each school principal or designee to notify the district school board of each minor student accumulating 15 unexcused absences in a period of 90 calendar days or who drop out of school. The district school superintendent must provide the names and identifying information of these students to the Department of Highway Safety and Motor Vehicles (DHSMV). DHSMV may not issue a driver license or learner permit, or may suspend the driving privileges of any reported student until the student has satisfied regular school attendance requirements as outlined in s 322.091, F.S.⁹

Bill's Effect:

The bill provides that district school superintendents' responsibilities include supporting local law enforcement agencies in enforcing school attendance.

The bill specifies that district attendance policies may allow a student with a lesser number of absences than currently provided in law to be referred to a school CST. The bill also revises the current list of optional interventions and requires CSTs to implement:

- Frequent attempts to communicate with parents;
- Evaluating for alternative ed programs; and
- Attendance contracts.

The bill provides that a CST may implement other interventions to address a student's nonattendance, including referral to other agencies for family services and a recommendation that a truancy petition be filed by the superintendent.

C. SECTION DIRECTORY:

Section 1. Amends s. 1003.02, F.S.; providing that a school district may adopt school attendance policies that address accumulated tardies and count them as unexcused absences; providing that a school district may adopt policies regarding referral to a child study team.

Section 2. Amends s. 1003.21, F.S.; providing that students over age sixteen who have not graduated from high school remain subject to compulsory school attendance until they file a formal declaration of intent to terminate school enrollment.

Section 3. Amends 1003.26, F.S.; providing that district school superintendent responsibilities include supporting law enforcement efforts to enforce school attendance; revising required child study team interventions.

Section 4. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state government expenditures.

⁹ Florida Department of Education, Attendance and Enrollment, Frequently Asked Questions available at <http://www.fldoe.org/faq/faq.asp?Dept=107&Cat=54>.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a fiscal impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of funds.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 28, 2006, the PreK-12 Committee adopted a strike-all amendment. The strike-all differs from the original bill as follows.

- The original bill amended s. 1003.21, F.S. authorizing a school district to raise the compulsory school attendance age to eighteen. The strike-all specifies that students sixteen years or older remain subject to compulsory school attendance until they file a formal declaration and adds exit interview procedures.
- The original bill amended s. 1003.23, F.S. to require that school attendance records document tardiness. The strike-all amends s. 1003.02 to authorize districts to adopt policies that address accumulated student tardiness and govern the timing for referring a student to a child study team.
- The original bill amended 1003.26, F.S. to remove enforcement of school attendance from superintendent's responsibilities. The strike-all restores this aspect of superintendent authority and adds the responsibility to support law enforcement agencies' enforcement of school attendance.
- Sections of the original bill that conformed cross references were removed.

This bill analysis reflects the bill as amended.

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CHAMBER ACTION

The PreK-12 Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to school attendance; amending s. 1003.02, F.S.; authorizing district school board attendance policies to allow accumulated tardies and early departures to be recorded as unexcused absences; authorizing district school board policies for student referral to a child study team under certain circumstances; amending s. 1003.21, F.S.; providing that students who have attained 16 years of age and have not graduated are subject to compulsory school attendance under certain circumstances; requiring student exit interviews prior to terminating school enrollment; amending s. 1003.26, F.S.; providing district school superintendent's responsibility to support local law enforcement agencies in enforcing school attendance; providing required and authorized child study team interventions; authorizing visits by school representatives; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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Section 1. Paragraph (b) of subsection (1) of section 1003.02, Florida Statutes, is amended to read:

1003.02 District school board operation and control of public K-12 education within the school district.--As provided in part II of chapter 1001, district school boards are constitutionally and statutorily charged with the operation and control of public K-12 education within their school district. The district school boards must establish, organize, and operate their public K-12 schools and educational programs, employees, and facilities. Their responsibilities include staff development, public K-12 school student education including education for exceptional students and students in juvenile justice programs, special programs, adult education programs, and career education programs. Additionally, district school boards must:

(1) Provide for the proper accounting for all students of school age, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students in the following fields:

(b) Enforcement of attendance laws.--Provide for the enforcement of all laws and rules relating to the attendance of students at school. District school boards are authorized to establish policies that allow accumulated unexcused tardies, regardless of when they occur during the school day, and early departures from school to be recorded as unexcused absences. District school boards are also authorized to establish policies

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52 that require referral to a school's child study team for
53 students who have fewer absences than the number required by s.
54 1003.26(1)(b).

55 Section 2. Paragraph (c) of subsection (1) of section
56 1003.21, Florida Statutes, is amended to read:

57 1003.21 School attendance.--

58 (1)

59 (c) A student who attains the age of 16 years during the
60 school year is not subject to compulsory school attendance
61 beyond the date upon which he or she attains that age if the
62 student files a formal declaration of intent to terminate school
63 enrollment with the district school board. Public school
64 students who have attained the age of 16 years and who have not
65 graduated are subject to compulsory school attendance until the
66 formal declaration of intent is filed with the district school
67 board. The declaration must acknowledge that terminating school
68 enrollment is likely to reduce the student's earning potential
69 and must be signed by the student and the student's parent. The
70 school district must notify the student's parent of receipt of
71 the student's declaration of intent to terminate school
72 enrollment. The student's guidance counselor or other school
73 personnel must conduct an exit interview with the student to
74 determine the reasons for the student's decision to terminate
75 school enrollment and actions that could be taken to keep the
76 student in school. The student must be informed of opportunities
77 to continue his or her education in a different environment,
78 including, but not limited to, adult education and GED test
79 preparation. Additionally, the student must complete a survey in

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a format prescribed by the Department of Education to provide data on student reasons for terminating enrollment and actions taken by schools to keep students enrolled.

Section 3. Section 1003.26, Florida Statutes, is amended to read:

1003.26 Enforcement of school attendance.--The Legislature finds that poor academic performance is associated with nonattendance and that school districts ~~schools~~ must take an active role in promoting and enforcing attendance as a means of improving student ~~the performance of many students~~. It is the policy of the state that each district school superintendent be responsible for enforcing school attendance of all students subject to the compulsory school age in the school district and supporting enforcement of school attendance by local law enforcement agencies. The responsibility includes recommending policies and procedures to the district school board ~~polieies and procedures to ensure that~~ require public schools to respond in a timely manner to every unexcused absence, and every ~~or~~ absence for which the reason is unknown, of students enrolled in the schools. District school board policies shall ~~must~~ require the each parent of a student to justify each absence of the student, and that justification will be evaluated based on adopted district school board policies that define excused and unexcused absences. The policies must provide that public schools track excused and unexcused absences and contact the home in the case of an unexcused absence from school, or an absence from school for which the reason is unknown, to prevent the development of patterns of nonattendance. The Legislature

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108 finds that early intervention in school attendance ~~matters~~ is
109 the most effective way of producing good attendance habits that
110 will lead to improved student learning and achievement. Each
111 public school shall implement the following steps to promote and
112 enforce regular school attendance:

113 (1) CONTACT, REFER, AND ENFORCE.--

114 (a) Upon each unexcused absence, or absence for which the
115 reason is unknown, the school principal or his or her designee
116 shall contact the student's parent to determine the reason for
117 the absence. If the absence is an excused absence, as defined by
118 district school board policy, the school shall provide
119 opportunities for the student to make up assigned work and not
120 receive an academic penalty unless the work is not made up
121 within a reasonable time.

122 (b) If a student has had at least five unexcused absences,
123 or absences for which the reasons are unknown, within a calendar
124 month or 10 unexcused absences, or absences for which the
125 reasons are unknown, within a 90-calendar-day period, the
126 student's primary teacher shall report to the school principal
127 or his or her designee that the student may be exhibiting a
128 pattern of nonattendance. The principal shall, unless there is
129 clear evidence that the absences are not a pattern of
130 nonattendance, refer the case to the school's child study team
131 to determine if early patterns of truancy are developing. If the
132 child study team finds that a pattern of nonattendance is
133 developing, whether the absences are excused or not, a meeting
134 with the parent must be scheduled to identify potential
135 remedies, and the principal shall notify the district school

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superintendent and the school district contact for home education programs that the referred student is exhibiting a pattern of nonattendance.

(c) If an initial meeting does not resolve the problem, the child study team shall implement the following interventions ~~that best address the problem. The interventions may include, but need not be limited to:~~

1. Frequent attempts at communication between the teacher and the family.†

~~2. Changes in the learning environment;~~

~~3. Mentoring;~~

~~4. Student counseling;~~

~~5. Tutoring, including peer tutoring;~~

~~6. Placement into different classes;~~

~~2.7. Evaluation for alternative education programs.†~~

~~3.8. Attendance contracts.†~~

~~9. Referral to other agencies for family services; or~~

~~10. Other interventions, including, but not limited to, a truancy petition pursuant to s. 984.151.~~

The child study team may, but is not required to, implement other interventions, including referral to other agencies for family services or recommendation for filing a truancy petition pursuant to s. 984.151.

(d) The child study team shall be diligent in facilitating intervention services and shall report the case to the district school superintendent only when all reasonable efforts to resolve the nonattendance behavior are exhausted.

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164 (e) If the parent refuses to participate in the remedial
165 strategies because he or she believes that those strategies are
166 unnecessary or inappropriate, the parent may appeal to the
167 district school board. The district school board may provide a
168 hearing officer, and the hearing officer shall make a
169 recommendation for final action to the district school board. If
170 the district school board's final determination is that the
171 strategies of the child study team are appropriate, and the
172 parent still refuses to participate or cooperate, the district
173 school superintendent may seek criminal prosecution for
174 noncompliance with compulsory school attendance.

175 (f)1. If the parent of a child who has been identified as
176 exhibiting a pattern of nonattendance enrolls the child in a
177 home education program pursuant to chapter 1002, the district
178 school superintendent shall provide the parent a copy of s.
179 1002.41 and the accountability requirements of this paragraph.
180 The district school superintendent shall also refer the parent
181 to a home education review committee composed of the district
182 contact for home education programs and at least two home
183 educators selected by the parent from a district list of all
184 home educators who have conducted a home education program for
185 at least 3 years and who have indicated a willingness to serve
186 on the committee. The home education review committee shall
187 review the portfolio of the student, as defined by s. 1002.41,
188 every 30 days during the district's regular school terms until
189 the committee is satisfied that the home education program is in
190 compliance with s. 1002.41(1)(b). The first portfolio review
191 must occur within the first 30 calendar days of the

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192 establishment of the program. The provisions of subparagraph 2.
193 do not apply once the committee determines the home education
194 program is in compliance with s. 1002.41(1)(b).

195 2. If the parent fails to provide a portfolio to the
196 committee, the committee shall notify the district school
197 superintendent. The district school superintendent shall then
198 terminate the home education program and require the parent to
199 enroll the child in an attendance option that meets the
200 definition of "regular school attendance" under s.
201 1003.01(13)(a), (b), (c), or (e), within 3 days. Upon
202 termination of a home education program pursuant to this
203 subparagraph, the parent shall not be eligible to reenroll the
204 child in a home education program for 180 calendar days. Failure
205 of a parent to enroll the child in an attendance option as
206 required by this subparagraph after termination of the home
207 education program pursuant to this subparagraph shall constitute
208 noncompliance with the compulsory attendance requirements of s.
209 1003.21 and may result in criminal prosecution under s.
210 1003.27(2). Nothing contained herein shall restrict the ability
211 of the district school superintendent, or the ability of his or
212 her designee, to review the portfolio pursuant to s.
213 1002.41(1)(b).

214 (g) If a student subject to compulsory school attendance
215 will not comply with attempts to enforce school attendance, the
216 parent or the district school superintendent or his or her
217 designee shall refer the case to the case staffing committee
218 pursuant to s. 984.12, and the district school superintendent or

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219 his or her designee may file a truancy petition pursuant to the
220 procedures in s. 984.151.

221 (2) GIVE WRITTEN NOTICE.--

222 (a) Under the direction of the district school
223 superintendent, a designated school representative shall give
224 written notice that requires enrollment or attendance within 3
225 days after the date of notice, in person or by return-receipt
226 mail, to the parent when no valid reason is found for a
227 student's nonenrollment in school. If the notice and requirement
228 are ignored, the designated school representative shall report
229 the case to the district school superintendent, and may refer
230 the case to the case staffing committee, established pursuant to
231 s. 984.12. The district school superintendent shall take such
232 steps as are necessary to bring criminal prosecution against the
233 parent.

234 (b) Subsequent to the activities required under subsection
235 (1), the district school superintendent or his or her designee
236 shall give written notice in person or by return-receipt mail to
237 the parent that criminal prosecution is being sought for
238 nonattendance. The district school superintendent may file a
239 truancy petition, as defined in s. 984.03, following the
240 procedures outlined in s. 984.151.

241 (3) RETURN STUDENT TO PARENT.--A designated school
242 representative may ~~shall~~ visit the home or place of residence of
243 a student and any other place in which he or she is likely to
244 find any student who is required to attend school when the
245 student is not enrolled or is absent from school during school
246 hours without an excuse, and, when the student is found, shall

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247 return the student to his or her parent or to the principal or
248 teacher in charge of the school, or to the private tutor from
249 whom absent, or to the juvenile assessment center or other
250 location established by the district school board to receive
251 students who are absent from school. Upon receipt of the
252 student, the parent shall be immediately notified.

253 (4) REPORT TO APPROPRIATE AUTHORITY.--A designated school
254 representative shall report to the appropriate authority
255 designated by law to receive such notices, all violations of the
256 Child Labor Law that may come to his or her knowledge.

257 (5) RIGHT TO INSPECT.--A designated school representative
258 shall have the right of access to, and inspection of,
259 establishments where minors may be employed or detained only for
260 the purpose of ascertaining whether students of compulsory
261 school age are actually employed there and are actually working
262 there regularly. The designated school representative shall, if
263 he or she finds unsatisfactory working conditions or violations
264 of the Child Labor Law, report his or her findings to the
265 appropriate authority.

266 Section 4. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 605 CS

Public Records

SPONSOR(S): Planas

TIED BILLS:

IDEN./SIM. BILLS: CS/SB 1320

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>7 Y, 0 N, w/CS</u>	<u>Williamson</u>	<u>Williamson</u>
2) <u>Juvenile Justice Committee</u>	<u></u>	<u>White</u>	<u>White</u>
3) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill creates a public records exemption for certain identification and location information for current or former Department of Juvenile Justice (DJJ) personnel. It also creates a public records exemption for certain identification and location information regarding the spouse and children of DJJ personnel. The exemption only applies if the DJJ personnel provides a written statement that he or she has made reasonable efforts to protect such information from public access via other means.

This bill provides for future review and repeal of the exemption and provides a statement of public necessity.

The bill does not grant rule-making authority to any administrative agency.

The bill could have a minimal fiscal impact on state and local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Background

Current law provides a number of public records exemptions for certain identifying and location information regarding police officers, child protective service investigators, firefighters, judges, and attorneys.¹ The exemptions also protect identifying and location information regarding the spouses and children of such employees.² There is, however, no such exemption for employees of juvenile detention facilities.

Effect of Bill

The bill creates a public records exemption for current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, senior juvenile detention officers, juvenile detention officer supervisors, juvenile detention officers, house parents I and II, house parent supervisors, group treatment leaders, group treatment leader supervisors, and rehabilitation therapists of the Department of Juvenile Justice (DJJ personnel). The following information is made exempt³ from public records requirements:

- Home addresses, telephone numbers, and photographs of DJJ personnel;
- Names, home addresses, telephone numbers, and places of employment of the spouse and children of DJJ personnel; and
- Names and locations of schools and day care facilities attended by the children of DJJ personnel.

The exemption only applies if the DJJ personnel provides a written statement that he or she has made reasonable efforts to protect such information from access via other means available to the public.

An agency, other than the employing agency, who is the custodian of such information must maintain the exempt status of that information only if such personnel or his or her employer submits a written request to the custodial agency.

This bill provides for future review and repeal of the exemption on October 2, 2011, pursuant to the Open Government Sunset Review Act.⁴ It also provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to create a public records exemption for DJJ personnel.

Section 2 reenacts s. 409.2577, F.S., to incorporate the amendment made to s. 119.071, F.S.

¹ Section 119.071(4)(d), F.S.

² *Id.*

³ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁴ Section 119.15, F.S.

Section 3 provides a public necessity statement.

Section 4 provides an October 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See "FISCAL COMMENTS."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See "FISCAL COMMENTS."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training related to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the exempt DJJ personnel information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments – Written Statement and Reasonable Efforts

The bill requires DJJ personnel to submit a written statement indicating that they have made reasonable efforts to protect the exempt information from public access via other means. The term “reasonable efforts” is not defined and thus, it is unclear precisely what efforts are required. Examples of such efforts might include requiring that the person have protected his or her personal information on the Internet, at county and city offices, and in the telephone book.

Further, of the categories of employees who are provided this same public records exemption, only guardian ad litem have been required to provide a similar statement.⁵ In contrast, law enforcement, correctional, and correctional probation officers, firefighters, judges, and specified employees of the Departments of Health and Children and Family Services,⁶ who have this same public records exemption, are not required to submit a writing documenting the undefined “reasonable efforts.” The writing requirement places DJJ personnel in the minority and creates an additional burden on such personnel in order to protect access to their identification and location information.

Other Comments – Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state’s public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is further addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁷ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual’s safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Governmental Operations Committee adopted an amendment and reported the bill favorably with committee substitute. The amendment:

- Removed the duplicative exemption for social security numbers.
- Removed the exemption for the photograph of a spouse or child of DJJ personnel, because it was unclear whether the photographs were collected by the employer.
- Conformed the public necessity statement to the exemption.

⁵ Section 119.071(4)(d)6., F.S., public records exemption for current and former guardian ad litem.

⁶ Section 119.071(4)(d)1., F.S.

⁷ Section 119.15, F.S.

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CHAMBER ACTION

1 The Governmental Operations Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5
6 A bill to be entitled

7 An act relating to public records; amending s. 119.071,
8 F.S.; providing an exemption from public records
9 requirements for the home addresses, telephone numbers,
10 and photographs of current or former juvenile probation
11 officers, juvenile probation supervisors, detention
12 superintendents, assistant detention superintendents,
13 senior juvenile detention officers, juvenile detention
14 officer supervisors, juvenile detention officers, house
15 parents I and II, house parent supervisors, group
16 treatment leaders, group treatment leader supervisors, and
17 rehabilitation therapists of the Department of Juvenile
18 Justice, the names, home addresses, telephone numbers, and
19 places of employment of spouses and children of such
20 personnel, and the names and locations of schools and day
21 care facilities attended by the children of such
22 personnel; providing a condition precedent to the granting
23 of such exemption; providing for review and repeal;

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CODING: Words stricken are deletions; words underlined are additions.

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reenacting s. 409.2577, F.S., relating to disclosure of information to the parent locator service of the Department of Children and Family Services, for the purpose of incorporating the amendment to s. 119.071, F.S., in a reference thereto; providing a statement of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.--

(4) AGENCY PERSONNEL INFORMATION.--

(d)1. The home addresses, telephone numbers, social security numbers, and photographs of active or former law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care

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52 facilities attended by the children of such personnel are exempt
 53 from s. 119.07(1). The home addresses, telephone numbers, and
 54 photographs of firefighters certified in compliance with s.
 55 633.35; the home addresses, telephone numbers, photographs, and
 56 places of employment of the spouses and children of such
 57 firefighters; and the names and locations of schools and day
 58 care facilities attended by the children of such firefighters
 59 are exempt from s. 119.07(1). The home addresses and telephone
 60 numbers of justices of the Supreme Court, district court of
 61 appeal judges, circuit court judges, and county court judges;
 62 the home addresses, telephone numbers, and places of employment
 63 of the spouses and children of justices and judges; and the
 64 names and locations of schools and day care facilities attended
 65 by the children of justices and judges are exempt from s.
 66 119.07(1). The home addresses, telephone numbers, social
 67 security numbers, and photographs of current or former state
 68 attorneys, assistant state attorneys, statewide prosecutors, or
 69 assistant statewide prosecutors; the home addresses, telephone
 70 numbers, social security numbers, photographs, and places of
 71 employment of the spouses and children of current or former
 72 state attorneys, assistant state attorneys, statewide
 73 prosecutors, or assistant statewide prosecutors; and the names
 74 and locations of schools and day care facilities attended by the
 75 children of current or former state attorneys, assistant state
 76 attorneys, statewide prosecutors, or assistant statewide
 77 prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of
 78 the State Constitution.

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2. The home addresses, telephone numbers, social security numbers, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

3. The home addresses, telephone numbers, social security numbers, and photographs of current or former United States attorneys and assistant United States attorneys; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former United States attorneys and assistant United States attorneys; and the names and locations of schools and day care facilities attended by the children of current or former United States attorneys and assistant United States attorneys are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15

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and shall stand repealed on October 2, 2009, unless reviewed and saved from repeal through reenactment by the Legislature.

4. The home addresses, telephone numbers, social security numbers, and photographs of current or former judges of United States Courts of Appeal, United States district judges, and United States magistrate judges; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of current or former judges of United States Courts of Appeal, United States district judges, and United States magistrate judges; and the names and locations of schools and day care facilities attended by the children of current or former judges of United States Courts of Appeal, United States district judges, and United States magistrate judges are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2009, unless reviewed and saved from repeal through reenactment by the Legislature.

5. The home addresses, telephone numbers, social security numbers, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subparagraph is subject to the Open Government Sunset Review Act in accordance

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135 with s. 119.15 and shall stand repealed on October 2, 2006,
136 unless reviewed and saved from repeal through reenactment by the
137 Legislature.

138 6. The home addresses, telephone numbers, places of
139 employment, and photographs of current or former guardians ad
140 litem, as defined in s. 39.820, and the names, home addresses,
141 telephone numbers, and places of employment of the spouses and
142 children of such persons, are exempt from s. 119.07(1) and s.
143 24(a), Art. I of the State Constitution, if the guardian ad
144 litem provides a written statement that the guardian ad litem
145 has made reasonable efforts to protect such information from
146 being accessible through other means available to the public.
147 This subparagraph is subject to the Open Government Sunset
148 Review Act in accordance with s. 119.15 and shall stand repealed
149 on October 2, 2010, unless reviewed and saved from repeal
150 through reenactment by the Legislature.

151 7. The home addresses, telephone numbers, and photographs
152 of current or former juvenile probation officers, juvenile
153 probation supervisors, detention superintendents, assistant
154 detention superintendents, senior juvenile detention officers,
155 juvenile detention officer supervisors, juvenile detention
156 officers, house parents I and II, house parent supervisors,
157 group treatment leaders, group treatment leader supervisors, and
158 rehabilitation therapists of the Department of Juvenile Justice,
159 the names, home addresses, telephone numbers, and places of
160 employment of spouses and children of such personnel, and the
161 names and locations of schools and day care facilities attended
162 by the children of such personnel are exempt from s. 119.07(1)

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163 and s. 24(a), Art. I of the State Constitution, if the
164 Department of Juvenile Justice personnel member provides a
165 written statement that he or she has made reasonable efforts to
166 protect such information from being accessible through other
167 means available to the public. This subparagraph is subject to
168 the Open Government Sunset Review Act in accordance with s.
169 119.15 and shall stand repealed on October 2, 2011, unless
170 reviewed and saved from repeal through reenactment by the
171 Legislature.

172 ~~8.7.~~ An agency that is the custodian of the personal
173 information specified in subparagraph 1., subparagraph 2.,
174 subparagraph 3., subparagraph 4., subparagraph 5., ~~or~~
175 subparagraph 6., or subparagraph 7. and that is not the employer
176 of the officer, employee, justice, judge, or other person
177 specified in subparagraph 1., subparagraph 2., subparagraph 3.,
178 subparagraph 4., subparagraph 5., ~~or~~ subparagraph 6., or
179 subparagraph 7. shall maintain the exempt status of the personal
180 information only if the officer, employee, justice, judge, other
181 person, or employing agency of the designated employee submits a
182 written request for maintenance of the exemption to the
183 custodial agency.

184 Section 2. For the purpose of incorporating the amendment
185 made by this act to section 119.071, Florida Statutes, in a
186 reference thereto, section 409.2577, Florida Statutes, is
187 reenacted to read:

188 409.2577 Parent locator service.--The department shall
189 establish a parent locator service to assist in locating parents
190 who have deserted their children and other persons liable for

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191 support of dependent children. The department shall use all
192 sources of information available, including the Federal Parent
193 Locator Service, and may request and shall receive information
194 from the records of any person or the state or any of its
195 political subdivisions or any officer thereof. Any agency as
196 defined in s. 120.52, any political subdivision, and any other
197 person shall, upon request, provide the department any
198 information relating to location, salary, insurance, social
199 security, income tax, and employment history necessary to locate
200 parents who owe or potentially owe a duty of support pursuant to
201 Title IV-D of the Social Security Act. This provision shall
202 expressly take precedence over any other statutory nondisclosure
203 provision which limits the ability of an agency to disclose such
204 information, except that law enforcement information as provided
205 in s. 119.071(4) (d) is not required to be disclosed, and except
206 that confidential taxpayer information possessed by the
207 Department of Revenue shall be disclosed only to the extent
208 authorized in s. 213.053(15). Nothing in this section requires
209 the disclosure of information if such disclosure is prohibited
210 by federal law. Information gathered or used by the parent
211 locator service is confidential and exempt from the provisions
212 of s. 119.07(1). Additionally, the department is authorized to
213 collect any additional information directly bearing on the
214 identity and whereabouts of a person owing or asserted to be
215 owing an obligation of support for a dependent child. The
216 department shall, upon request, make information available only
217 to public officials and agencies of this state; political
218 subdivisions of this state, including any agency thereof

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219 providing child support enforcement services to non-Title IV-D
220 clients; the custodial parent, legal guardian, attorney, or
221 agent of the child; and other states seeking to locate parents
222 who have deserted their children and other persons liable for
223 support of dependents, for the sole purpose of establishing,
224 modifying, or enforcing their liability for support, and shall
225 make such information available to the Department of Children
226 and Family Services for the purpose of diligent search
227 activities pursuant to chapter 39. If the department has
228 reasonable evidence of domestic violence or child abuse and the
229 disclosure of information could be harmful to the custodial
230 parent or the child of such parent, the child support program
231 director or designee shall notify the Department of Children and
232 Family Services and the Secretary of the United States
233 Department of Health and Human Services of this evidence. Such
234 evidence is sufficient grounds for the department to disapprove
235 an application for location services.

236 Section 3. The Legislature finds that it is a public
237 necessity that the home addresses, telephone numbers, and
238 photographs of current or former juvenile probation officers,
239 juvenile probation supervisors, detention superintendents,
240 assistant detention superintendents, senior juvenile detention
241 officers, juvenile detention officer supervisors, juvenile
242 detention officers, house parents I and II, house parent
243 supervisors, group treatment leaders, group treatment leader
244 supervisors, and rehabilitation therapists of the Department of
245 Juvenile Justice, the names, home addresses, telephone numbers,
246 and places of employment of spouses and children of such

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personnel, and the names and locations of schools and day care facilities attended by the children of such personnel be made exempt from public records requirements if the Department of Juvenile Justice personnel member seeking the exemption provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public. This exemption is justified because, if such information were not made exempt from public records requirements, a juvenile probation officer, juvenile probation supervisor, detention superintendent, assistant detention superintendent, senior juvenile detention officer, juvenile detention officer supervisor, juvenile detention officer, house parent, house parent supervisor, group treatment leader, group treatment leader supervisor, or rehabilitation therapist of the Department of Juvenile Justice or his or her family could be harmed or threatened with harm by a juvenile defendant or by a friend or family member of a juvenile defendant.

Section 4. This act shall take effect October 1, 2006.